

Senate Bill No. 586

Passed the Senate September 11, 2007

Secretary of the Senate

Passed the Assembly September 10, 2007

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 53545.9 to, and to add Chapter 8.5 (commencing with Section 50705) to Part 2 of Division 31 of, the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 586, Dutton. Affordable Housing Innovation Fund: Affordable Housing Revolving Development and Acquisition Program.

Existing law, the Housing and Emergency Shelter Trust Fund Act of 2006, authorizes the issuance of bonds in the amount of \$2,850,000,000 pursuant to the State General Obligation Bond Law. Proceeds from the sale of these bonds are required to be used to finance various existing housing programs, capital outlay related to infill development, brownfield cleanup that promotes infill development, and housing-related parks. The act establishes the Housing and Emergency Shelter Trust Fund of 2006 in the State Treasury and requires the sum of \$1,500,000,000 to be deposited in the Affordable Housing Account, which the act establishes in the fund. The act continuously appropriates the money in the account in accordance with a specified schedule that requires, among other things, the transfer of the sum of \$100,000,000 to the Affordable Housing Innovation Fund, which the act establishes in the State Treasury, to be administered by the Department of Housing and Community Development and expended for competitive grants or loans to sponsoring entities that develop, own, lend, or invest in affordable housing, and to create pilot programs to demonstrate innovative, cost-saving approaches to creating or preserving affordable housing.

This bill would establish the Affordable Housing Revolving Development and Acquisition Program under the administration of the department. The bill would authorize applicants under the program to apply for loans to purchase real property for the development or preservation of housing affordable to low-income households and would require applicants to demonstrate certain

qualification factors. The bill would require the department to adopt guidelines and regulations establishing the minimum criteria required of the fund manager and applicants, as well as a point system for prioritizing requests in the event that requests exceed the funds available for the program in any given year. The guidelines and regulations would give priority to applicants who can demonstrate specified criteria.

The bill would require the department to issue a request for qualification to select a private sector entity to manage the Loan Fund. The bill would establish criteria that the fund manager must meet and would also require applicants for the fund manager position to submit a business plan that addresses appropriate financial and internal controls as well as a description of how the lender would close loans quickly.

The bill would require the funds in the Affordable Housing Innovation Fund to be allocated in the amount of \$50,000,000 for the Affordable Housing Revolving Development and Acquisition Program, of which \$25,000,000 would be made available to the Loan Fund and \$25,000,000 would be made available to the Practitioner Fund; \$5,000,000 for the Construction Liability Insurance Reform Pilot Program, which this bill would establish within the department; \$35,000,000 for a local housing trust fund matching grant program established under a specified provision of existing law; and \$10,000,000 for the Innovative Homeownership Program, which the bill would require the department to develop and implement as specified. The bill would make an appropriation by authorizing the funds in the continuously appropriated fund to be expended for these additional purposes.

The bill would require the department to grant preference to a housing trust fund that agrees to expend more than 65% of state funds to a specified first-time homebuyers' program and to set aside funding for a specified 36-month period for newly established housing trust funds that are in a county with a population of less than 425,000 persons when awarding the \$35,000,000 under the local housing trust fund matching grant program. The bill would also require the department to make available 50% of this grant money exclusively for newly established housing trust funds.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby finds and declares that the Housing and Emergency Shelter Trust Fund Act of 2006 allocates the amount of one hundred million dollars (\$100,000,000) to the Affordable Housing Innovation Fund established in the State Treasury under subparagraph (F) of paragraph (1) of subdivision (a) of Section 53545 of the Health and Safety Code and states that the expenditure of those funds is subject to the enactment of a subsequent statute approved by a $\frac{2}{3}$ vote of each house of the Legislature.

(b) Accordingly, it is the intent of the Legislature in enacting this act to program the funds made available under subparagraph (F) of paragraph (1) of subdivision (a) of Section 53545 of the Health and Safety Code from the Affordable Housing Innovation Fund.

SEC. 2. Chapter 8.5 (commencing with Section 50705) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 8.5. AFFORDABLE HOUSING REVOLVING
DEVELOPMENT AND ACQUISITION PROGRAM

50705. (a) The Affordable Housing Revolving Development and Acquisition Program is hereby established for the purpose of funding the acquisition of property to develop or preserve affordable housing. The program will be comprised of a Loan Fund and a Practitioner Fund.

(b) The department shall adopt guidelines and regulations for the operation of the program and may administer the program under those guidelines for 24 months after the date of adoption of the guidelines. The guidelines shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

50706. (a) (1) The department shall issue a request for qualification to select a private sector entity to manage the Loan Fund for a period of five years, and the agreement may be extended in additional five-year increments. The selected fund manager shall be responsible for reviewing and approving loan applications, originating and servicing loans, and establishing terms and

conditions for loan applications. The fund manager shall meet all of the following criteria:

(A) Be a nonprofit lender with experience making similar loans in this state.

(B) Have originated and serviced loans in the aggregate amount of not less than thirty million dollars (\$30,000,000) that were used to develop or acquire affordable housing, including at least ten million dollars (\$10,000,000) or more in acquisition loans.

(C) Have at least twenty-five million dollars (\$25,000,000) of its own capital invested in loans to affordable housing developers whose characteristics are similar to the criteria the fund manager will be implementing under the new gap acquisition fund.

(D) Be the originator of loans in the aggregate amount of twenty-five million dollars (\$25,000,000) or more using bank or other investor capital.

(2) Applicants for fund manager shall submit a detailed business plan describing how the entity intends to meet the requirements of the Loan Fund. The business plan shall include a description of appropriate financial and internal controls and underwriting standards and procedures. The plan shall also demonstrate how the lender will close loans quickly.

(b) Applicants may apply to the fund manager for loans to purchase real property for the development or preservation of housing affordable to low-income households. Loans made under this section shall be for a maximum term of five years.

(c) Applicants shall demonstrate all of the following:

(1) The support of the local government in which the real property is located for the proposed development project. Support may be demonstrated through a letter from the governing board or the manager of the housing or community development department.

(2) Availability of additional funds equal to three times the loan amount.

(3) Sufficient organizational stability and capacity to carry out the proposed development project for which the property is being purchased. Capacity may be demonstrated by substantial successful experience performing similar activities, or through other means acceptable to the department.

(4) Completion of not less than five housing development projects, with each project having not less than 40 percent of the

units sold at an affordable housing cost, as defined in Section 50052.5, or rented at an affordable rent, as defined by Section 50053.

(d) The guidelines and regulations, at a minimum, shall do all of the following:

(1) Establish the minimum criteria required of the fund manager and applicants.

(2) Establish a point system for prioritizing requests in the event that requests exceed the funds available for the program in any given year.

(3) Give priority to applicants that propose development projects with the greatest level of affordability.

(4) Provide that any equity not originally contributed by the borrower shall return to the state for the purposes of this program if the property is sold or transferred for purposes other than affordable housing.

(5) Establish a reasonable fund manager administrative fee.

(e) Funds not lent by the fund manager within 48 months after availability to the fund manager shall be disencumbered and transferred to the Self-Help Housing Fund established under Section 50697.1, to be expended for the purposes of the CalHome Program established under Chapter 6 (commencing with Section 50650).

50707. (a) The department shall issue a request for qualification to select one or more nonprofit entities that qualify under Section 501(c)(3) of the Internal Revenue Code to borrow moneys from the Practitioner Fund to purchase real property for the development or preservation of housing affordable to low- and moderate-income households. The selection of one or more nonprofit entities that qualify shall be made by the department, based on the review and recommendation of the department's Loan and Grant Committee. The loan from the Practitioner Fund will be for a maximum of five years.

(b) The entity or entities selected pursuant to subdivision (a) shall demonstrate all of the following:

(1) Operation as a nonprofit entity that qualifies under Section 501(c)(3) of the Internal Revenue Code with housing development experience in this state and a minimum of 25 employees.

(2) Availability of additional funds of at least three times the loan amount.

(3) Completion of not less than 2,500 total housing units, with each housing development project having a majority of its units affordable to low- and moderate-income families, as defined in Section 50052.5 or 50053. For purposes of this requirement, the applicant shall be the developer of record with primary day-to-day management and financial responsibility for the development.

(4) Sufficient organizational stability and capacity to use the Practitioner Fund to achieve scale economies in the development and preservation of affordable housing. Capacity may be demonstrated by substantial successful experience in affordable housing development and management, including successful partnerships with local government entities.

(5) Assets worth at least two hundred million dollars (\$200,000,000), to demonstrate evidence of sufficient net worth for assurance of repayment of the loan.

(c) The guidelines and regulations, at a minimum, shall do all of the following:

(1) Establish the minimum criteria required of the practitioner and a point system for rating and ranking responses.

(2) Provide that any equity not originally contributed by the borrower shall be returned to the state for the purposes of this program, if property acquired with state funds is sold or transferred for purposes other than affordable housing.

(3) Give priority to those respondents who demonstrate an immediate need of funds from the committee and who can demonstrate the greatest levels of efficiency and economies of scale.

(4) Establish a reasonable practitioner administrative fee.

(d) Funds not used by a practitioner within 36 months after their availability to the practitioner shall be disencumbered and transferred to the Loan Fund.

(e) The guidelines and regulations shall require that before expending any state funds, the borrower shall obtain binding commitments for at least three dollars (\$3) of nonstate acquisition capital to leverage every dollar of loan funds. To be considered nonstate acquisition capital, those funds shall be committed for a term at least equal to the term of the loan made under this section, and shall be available to be used for the purposes of this section. Equity from the anticipated sale of either federal or state low-income housing tax credits shall not be considered nonstate

acquisition capital. If the selected entity is unable to meet these capital leveraging requirements within 180 days after selection, the loan shall be repaid, with accumulated interest, to the department, deposited in the fund, and made available to the next highest rated qualified project sponsor. If, within 270 days after selection, there is no remaining qualified applicant available in the case of the Practioner Fund, any unexpended funds shall be made available for the purposes of Section 50706.

(f) The department shall establish a schedule for the timely expenditure of funds by the applicant. The department may require repayment in the event that a selected entity fails to use the funds consistently with the schedule and the other terms of the program.

50708. The department shall collect all of the following from each borrower and include a summary of this information in its last annual report submitted to the Legislature on or before December 31, 2013, pursuant to Section 50408:

(a) A general description of activities undertaken pursuant to this chapter.

(b) For each property acquired, the acquisition price; the amount and terms of the nonstate funds leveraged, and a statement as to whether the state acquisition funds were essential to the leveraging of these other acquisition funds; a description of the expiration date of the project's rent or sales restrictions; the number of assisted units created or preserved; the amount of state funds required for each assisted unit created or preserved; and the level of affordability maintained.

(c) If any borrower sells any property acquired with assistance through these state funds, a description of the name and location of the purchaser, the purchase price, and the total transaction costs.

(d) A comparison of the cost of creating or preserving units under Section 50706 with that of Section 50707.

(e) An overall assessment of the effectiveness of these funds as tools in creating and preserving affordable housing.

SEC. 3. Section 53545.9 is added to the Health and Safety Code, to read:

53545.9. Of the one hundred million dollars (\$100,000,000) transferred to the Affordable Housing Innovation Fund established in the State Treasury under subparagraph (F) of paragraph (1) of subdivision (a) of Section 53545, the following amounts shall be allocated as follows:

(a) (1) The department shall make available the amount of fifty million dollars (\$50,000,000) for the Affordable Housing Revolving Development and Acquisition Program.

(2) Of the amount made available for the program, twenty-five million dollars (\$25,000,000) shall be made available for the Loan Fund and twenty-five million dollars (\$25,000,000) shall be made available for the Practitioner Fund.

(b) The department shall make available the amount of five million dollars (\$5,000,000) for the Construction Liability Insurance Reform Pilot Program, which is hereby established in the Department of Housing and Community Development. The purpose of the program is to promote best practices for residential construction quality control in housing programs sponsored by the department or the California Housing Finance Agency, as a means of reducing insurance rates for condominium developers in this state. Funds shall be made available in the form of grants for predevelopment costs of condominium projects funded by the department or the California Housing Finance Agency that utilize enhanced construction oversight and monitoring programs and processes including, but not limited to, video recording of the construction process, use of quality control manuals, and increased quality control inspections.

(c) The department shall make available the amount of thirty-five million dollars (\$35,000,000) for the local housing trust fund matching grant program established under Section 50843.5. The department shall make available 50 percent of this amount exclusively for newly established housing trust funds.

(1) When awarding grants from the funds allocated under this subdivision to existing trust funds, the department shall grant preference to a housing trust fund that agrees to expend more than 65 percent of state funds for the purpose of downpayment assistance to first-time homebuyers.

(2) When awarding grants from the funds allocated under this subdivision to newly established housing trust funds, the department shall set aside funding for a period of 36 months from the date funds are first made available for newly established housing trust funds that are in a county with a population of less than 425,000 persons.

(d) The department shall make available the amount of ten million dollars (\$10,000,000) for the Innovative Homeownership

Program, which the department shall develop and implement as follows:

(1) The program shall be designed to increase or maintain affordable homeownership opportunities for Californians with lower incomes.

(2) The department shall adopt guidelines for the program that, among other things, shall maximize the number of units assisted, limit the expenditure of funds for administrative costs, and maximize the leverage of public and private financing sources.

(3) The guidelines adopted by the department shall provide for the issuance of a notice of funding availability soliciting competitive proposals for the use of funds consistent with those guidelines and with subparagraph (F) of paragraph (1) of subdivision (a) of Section 53545.

(4) The guidelines adopted by the department shall not be subject to the requirements of Chapter 6.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) The department shall include within the annual report required under Section 50408 a detailed summary and description of the manner in which funds made available under this subdivision were expended during the previous year and a statement regarding the manner in which those expenditures meet the intent of the Legislature and the voters that funds from the Innovative Housing Fund be expended in support of innovative, cost-saving approaches to creating or preserving affordable housing.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make available at the earliest possible time funds to address the state's pressing need for affordable housing, it is necessary that this act take effect immediately.

Approved _____, 2007

Governor